IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3075 OF 2001

IN

SUIT NO. 4240 OF 2001

Mr.Ardeshir D. Mistry .. Plaintiff

versus

Ms.Putlikeki Vakharia & ors. .. Defendants

...

Mr.Pradip Sancheti i/b Niranjan Jagtap for the plaintiff.

Mr.Kamlesh Tiwari for the defendant nos.1 and 2.

None present for the defendant nos.3 to 6.

CORAM : D.G. KARNIK,J.

DATED : 27th January 2005.

P.C.:

1. Heard the learned counsel for the plaintiffs and defendant nos.1 and 2. None present for the rest of the defendants.

2. This motion arises in a suit filed by the plaintiffs interalia for a declaration that the sale deed dated 28th September 2000 executed by the defendant nos.1, 2 and 3 in favour of defendant nos.4, 5 and 6 (Exhibit-K to the plaint) is null and void and of no effect in law whatsoever. They have also prayed for several other reliefs in the suit. At the hearing of this motion, the learned counsel for the plaintiff only presses that the defendant nos.4, 5 and 6 who are the purchasers under the sale deed dated 28th September 2000 be restrained by an order of injunction from further alienating or transferring the suit property in favour of third persons.

3. There are two circumstances which entitle the plaintiffs to a partial relief. Firstly granting of an injunction is necessary to prevent the multiplicity of the proceedings. If the defendant nos.4,5 and 6 further transfer the property to anybody else, there would be multiplicity of the litigation which would be prevented by granting an injunction against them. Secondly, by an ad-interim order dated 22nd January 2002 this Court restrained

the defendant nos.4, 5 and 6 from disposing of the suit property till the disposal of the Notice of Motion. That order is in force for a period of more than three years. The defendant nos.4, 5 and 6 have not appeared at the hearing of the motion and have not shown cause why ad-interim order should not be confirmed, pending the hearing of the suit.

4. However, in my view, the plaintiffs would be required to put to conditions for confirmation of the ad-interim relief. It is a common fact that suits take considerably long time for a decision. It is therefore necessary to protect the defendant nos.4, 5 and 6 against any loss likely to be suffered by them in the event the suit is ultimately dismissed. In the suit the plaintiffs have pleaded that there was an oral agreement for sale in their favour and they had agreed to purchase the property for a sum of Rs.32,00,000/-. The learned counsel for the plaintiffs states that the present value of the property is more than Rs.50,00,000/-. In the circumstances, it would be appropriate to direct the plaintiffs to deposit in this Court a sum of Rs.32,00,000/- being the agreed consideration as a condition for continuation of the injunction. For

these reasons, I pass the following order:-

5. During the pendency of the suit, the defendant nos.4, 5 and 6 are restrained from selling, alienating or transferring the suit property to third persons subject to a condition that the plaintiffs deposit in the Court a sum of Rs.32,00,000/- within a period of six weeks. On such deposit being made, the amount shall be invested in State Bank of India or any other nationalised bank of the choice of the plaintiff, if such choice is indicated at the time of the deposit, initially for a period of 13 months to be renewed from time to time till the disposal of the suit. It is clarified that the injunction shall stand vacated automatically if the entire amount of Rs.32,00,000/- is not deposited in the Court within a period of six weeks.

D.G. KARNIK, J